IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 14154 of 2004

Between:

Shaik Chand Bee W/o Shaik Jamaal
R/o Thimmapuram Village, Mahanandi Mandal, Kurnool District.

..... PETITIONER

AND

1. The Revenue Divisional Officer, Nandyal, Kurnool District.
2 The Mandal Revenue Officer Mahanandi Mandal, Kurnool District.
3 Mangali Chelamaiah S/o Venganna
R/o Thimmapuram Village, Mahanandi Mandal, Kurnool District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction or particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in issuing the impugned orders in Rc. I.588/2004 dated 29-07-2004 canceling the D-Form patta of the petitioner granted by the 2nd respondent in R. Dis 110/04 dated 28-03-2004 in Survey No. 813 to an extent of 1-00 acre of Bukkapuram Village, at the behest of the 3rd respondent for ulterior reasons without giving notice and opportunity on flimsy and untenable grounds, as illegal, arbitrary violative of Article 14, 16, 19, 21 of Constitution of India and consequently set aside the above stated impugned orders of the 1st respondent.

Counsel for the Petitioner:MR.K.RATHANGA PANI REDDY

Counsel for Respondent Nos.1 and 2: GP FOR REVENUE

Counsel for the Respondent No.3 : P.VEERA REDDY

The Court made the following:

O R D E R :

Though interlocutory applications are listed for hearing, the matter is heard finally with the consent of learned counsel for the petitioner, learned Assistant Government Pleader for Revenue (Assignments) and the learned counsel for third respondent.

The petitioner claims to be a landless poor person. By proceedings R.Dis.No.110/2004, dated 28-3-2004 second respondent assigned an extent of Ac.1-00 in Survey No.813 of Bukkapuram Village. The petitioner allegedly took possession of the land and cultivating the same. The Mandal Revenue Officer issued Pattadar Pass Book No.1258 as well as title deed of even number under Andhra Pradesh Rights in Land & Pattadar Pass Books Act, 1971. When the third respondent allegedly tried to interfere, the petitioner filed a suit being O.S.No.441 of 2004 on the file of the Court of Principal Junior Civil Judge, Nandyal. She also filed an interlocutory application being I.A.No.1019 of 2004 for ad interim injunction and the same is pending. In the meanwhile, first respondent herein passed the impugned order bearing Rc.I.588/2004,
dated 29-7-2004 whereby and where under, the assignment of patta in her favour was ordered to be cancelled under Board Standing Order (BSO) No.15 allegedly for procedural irregularities committed in the assignment of land. Assailing the same the present writ petition is filed mainly on two grounds. The petitioner contends that as per D-Form patta, the assignee is required to bring the land into cultivation within a period of three years, and therefore, the Revenue Divisional Officer illegally cancelled the assignment within three months. Secondly, it is contended that the impugned order is passed by the Revenue Divisional Officer without any authority and without issuing any notice.

In the counter affidavit filed by the third respondent, it is stated that the total extent of land comprised in Survey No.813 is Acs.9-64, out of which the third respondent and his ancestors have been in possession to an extent of Acs.4-56 since time immemorial, that the Revenue officials recognized the possession of the petitioner and necessary entries were also found in the Revenue records, that the petitioner dug a bore well fifteen (15) years ago and has been raising Banana crop and that the petitioner managed to secure assignment of Ac.1-00 of land in Survey No.813 without there being proper sub-division of the land. The third respondent further states that in the suit filed by the petitioner, an Advocate-Commissioner was appointed by the Court of the Principal Junior Civil Judge, Nandyal, in I.A.No.1236 of 2004 and the said Advocate-Commissioner submitted a report to the effect that there is a standing Banana crop, which is three to four years old. The third respondent also asserts that the petitioner has not cultivated the land and in view of the procedural irregularities the assignment was cancelled.

Learned counsel for the petitioner Sri K.Rathangapani Reddy submits that the impugned order is void as principles of natural justice were violated. Secondly, he would urge that the Revenue officials have issued Pattadar Pass Books and title deeds, and therefore, it should

be presumed that in respect of the land assigned to the petitioner there was no rival claimant. Lastly, he would urge that the impugned order was passed within three months from the date of assignment on the ground that the land was not cultivated, which is improper because the petitioner could not have brought the land into cultivation within a period of three years. He would also submit that for the alleged violation of conditions of assignment, it is the Mandal Revenue Officer who can pass the order and the Revenue Divisional Officer is not competent to pass the order.

Learned counsel for third respondent Sri P.Veera Reddy submits that the writ petitioner did not make any application for assignment and the assignment was made without inviting the objections and the entire procedure for assignment is vitiated as no notice was issued by the Mandal Revenue Officer to the third respondent for assigning the land of the writ petitioner.

It is not disputed before this Court that when the conditions of grant by way of D-Form patta are violated, it is only the Mandal Revenue Officer, who is competent to pass orders canceling the assignment. Peculiarly in this case the first respondent passed orders on the report submitted by the Mandal Revenue Officer alleging certain procedural irregularities. The Revenue Divisional Officer is an appellate authority over the orders of the Mandal Revenue Officer for cancelling the assignment. As the Revenue Divisional Officer already passed the order directly, the same is unsustainable. Further, a reading of the impugned order would disclose that no notice was issued to the petitioner and the order came to be passed on an application made by the third respondent. Thirdly, as per the condition No.2 of D-Form patta, an assignee has to bring the land into cultivation within a period of three years. Even before the expiry of the period of three years, it was improper for the Revenue Divisional Officer to come to a conclusion that the petitioner failed to cultivate the land. These incurable defects in the impugned order render the same unsustainable in law.

For the above reasons, the writ petition is allowed and the matter is remitted to the Mandal Revenue Officer, Mahanandi Mandal, Kurnool District, for appropriate action in the matter. Needless to mention that the Mandal Revenue Officer shall issue a notice to the petitioner as well as the third respondent and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. If any party is aggrieved by the orders of the Mandal Revenue Officer, it shall be open to them to approach the Revenue Divisional Officer, Nandyal, by filing an appeal, in which event the matter shall be decided without being influenced by any observations made hereinabove as well as the impugned order of the first respondent. As there is a dispute with regard to the possession, it would be in the interest of both the parties to order *status quo* obtaining as on today. No costs.

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(V.V.S.RAO, J.)

29-09-2004.

Msr/sh.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday, the Twenty Ninth Day of September, Two Thousand and Four.

To

1 The Revenue Divisional Officer, Nandyal, Kurnool District
2 The Mandal Revenue Officer Mahanandi Mandal, Kurnool District.
3. 2CCs to the G.P. for Revenue, High Court Buildings, Hyderabad (OUT).

4. 2 CD copies.

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.14154 of 2004

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29-09-2004.

(Msr/sh)